

**UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE TENTH CIRCUIT**

IN RE DONALD TROY STAKER and
KERRY LEE STAKER,

Debtors.

BAP No. UT-12-072

DONALD TROY STAKER and
KERRY LEE STAKER,

Appellants,

v.

Bankr. No. 11-35404
Chapter 7

ORDER DENYING MOTION FOR
LEAVE TO APPEAL AS
UNNECESSARY, AFFIRMING
ORDER APPEALED, AND
DISMISSING APPEAL

GARY E. JUBBER, Chapter 7 Trustee,
WELLS FARGO BANK, N.A., doing
business as America's Servicing
Company on behalf of US Bank NA,
Trustee for Citigroup Mortgage Loan
Trust, Mortg. Pass-Through Cert.
2005-8, and U.S. BANK NATIONAL
ASSOCIATION, as Trustee for
Citigroup Mortgage Loan Trust, Inc.,
Mortgage Pass-Through Certificates,
Series 2005-8,

Appellees.

October 25, 2012

Before MICHAEL, NUGENT, and BROWN, Bankruptcy Judges.

The matter before the Court is the pro se Appellants Donald Troy Staker and Kerry Lee Stakers' motion for leave to appeal (the "Motion") from the bankruptcy court's August 30, 2012, Order Overruling Debtors' Objection to Claim No. 13 Without Prejudice (the "Order"). No response to the Motion has been filed, nor has any election to have this appeal heard by the United States District Court for the District of Utah been filed. On October 9, 2012, before the

Motion had been resolved and before any briefing deadlines had been set, Appellants filed their opening brief and accompanying appendix. As a result, this Court now has jurisdiction and sufficient information to resolve the Motion, as well as to address the very limited legal issue presented, and thus conclude the appeal.

This Court has jurisdiction to hear appeals from final orders, final collateral orders, and, with leave of court, interlocutory orders.¹ Generally, orders denying objections to claims are appealable final orders.² The Order appealed, however, merely states that “[Appellants’] Objection is OVERRULED without prejudice.” The Motion does not set forth facts sufficient for us to ascertain the events below leading to the entry of the Order. However, we now have the benefit of the Appellants’ brief and accompanying appendix, which contains copies of: 1) the proof of claim at issue; 2) Appellants’ objection; 3) the Appellees Wells Fargo, N.A. and U.S. Bank National Associations’ (the “Banks”) response thereto; 4) Appellants’ rebuttal; and 5) a transcript that provides the bankruptcy court’s reasoning. As a result, it is plain to us what transpired. The bankruptcy court intended for the Appellants to prosecute the merits of their objection in the context of an adversary proceeding.

Appellants scheduled the debt in question as unsecured, but the Banks’ proof of claim described the debt as secured by real property. Appellants objected, disputing the Banks’ assertion that the debt was secured. Thus, the transcript reveals the bankruptcy court’s rationale for overruling the objection— it was overruled as procedurally improper because it involved a challenge to the

¹ 28 U.S.C. § 158; *Personette v. Kennedy (In re Midgard Corp.)*, 204 B.R. 764, 768 (10th Cir. BAP 1997).

² See *Okla. State Dept. of Health v. Med. Mgmt. Group, Inc. (In re Med. Mgmt. Group, Inc.)*, No. WO-03-004, 2003 WL 21487310 (10th Cir. BAP June 27, 2003).

Banks' claims that their interests in real property were secured.³

While the Order is not the final order in the case as it did not include a substantive ruling on the Appellants' objection, it did terminate all proceedings related thereto. It was entered based on the bankruptcy court's conclusion that an adversary proceeding was the proper avenue for Appellants' claim litigation against the Banks. Thus, the Order is a final order for purposes of appeal and this appeal should be allowed to proceed.

The sole question presented in this appeal is whether Appellants' objections to the Banks' claims should have been filed as an adversary proceeding. Appellants posit that a contested matter is the proper means by which an objection to a claim is to be filed. However, when the objection is based on the validity, priority or extent of a lien, this contention no longer holds true. Federal Rule of Bankruptcy Procedure 3007(b), added by the 2007 amendments, provides:

A party in interest shall not include a demand for relief of a kind specified in Rule 7001 in an objection to the allowance of a claim, but may include the objection in an adversary proceeding.

Appellants' objection to the claim is clearly related to the secured versus unsecured status of the Banks' claims, and disputes the lien claimed by the Banks on real property. Matters pertaining to the validity, priority or extent of a lien must be brought in the form of adversary proceedings. The Order correctly determined that an adversary proceeding is the proper forum to challenge lien priority.

We see no reason to require the Banks or the Trustee-Appellee herein to file responsive briefs in this appeal, only for us to reach the same conclusion.

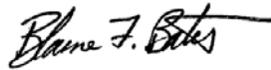
³ See August 8, 2012, Transcript at 3, in Appellant's Appendix at 142 ("Well, this is a claim objection objecting to the secured status of the creditor. Procedure is improper. Challenge to secured interest or lien on property must be brought by adversary pursuant under Rule [7001]. I'm denying the motion without - or the objection without prejudice because it's procedurally improper.").

Accordingly, the Order should be affirmed and this appeal should be dismissed.

Accordingly, IT IS HEREBY ORDERED that:

- (1) The Motion is DENIED as unnecessary.
- (2) The Order is AFFIRMED.
- (3) This appeal is DISMISSED.

For the Panel:

A handwritten signature in black ink that reads "Blaine F. Bates". The signature is written in a cursive style with a long horizontal stroke at the end.

Blaine F. Bates
Clerk of Court